

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID CARMINE LETTIERI,

CASE NO. C24-0028-KKE

Plaintiff(s),

V.

**ORDER DECLINING TO SERVE AND
PROVIDING LEAVE TO AMEND THE
COMPLAINT**

T-MOBILE, et al.,

Defendant(s).

This matter comes before the Court on the civil rights complaint filed by Plaintiff David Carmine Lettieri, proceeding *pro se*. See Dkt. Nos. 1, 7. In granting Plaintiff's application to proceed *in forma pauperis*, U.S. Magistrate Judge Brian Tsuchida recommended that the Court screen Plaintiff's complaint under 28 U.S.C. § 1915(e)(2)(B) before issuing summons. Dkt. No. 6. Based on its review, the Court declines to serve the complaint at this time and will provide Plaintiff leave to file an amended pleading by April 5, 2024, to cure the deficiencies identified

The Court will dismiss a complaint at any time if the action fails to state a claim, raises frivolous or malicious claims, or seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2)(B). In order to state a claim for relief under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), a plaintiff must show that (1) a person acting under color of federal law committed the conduct at issue; and (2) the federal actor's conduct deprived

1 the plaintiff of a right, privilege, or immunity protected by the United States Constitution or the
2 laws of the United States. *See Beltran v. United States*, No. 3:15-CV-00785-SI, 2015 WL
3 7722414, at *3 (citing *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988)). “A *Bivens* action can
4 be maintained only against federal officials in their individual capacities.” *Leon v. Elledge*, No.
5 2:22-cv-00851-BHS-TLF, 2022 WL 17904063, at *2 (W.D. Wash. Dec. 23, 2022) (citing *Morgan*
6 *v. United States*, 323 F.3d 776, 780 n.3 (9th Cir. 2007)).

7 Plaintiff’s complaint purports to raise *Bivens* claims against federal officials and indicates
8 that the constitutional rights at issue in his case relate to the fabrication of evidence and his right
9 to confrontation and a fair trial. *See* Dkt. No. 7 at 3–4. Plaintiff has not explained how the four
10 Defendants listed in the complaint, which include T-Mobile and a T-Mobile employee, were acting
11 under color of federal law, nor has he explained how actions or inactions he describes violated his
12 constitutional rights. *See id.* at 2–3, Dkt. No. 1-2.

13 If Plaintiff intends to pursue a *Bivens* claim in this Court, he must file an amended
14 complaint no later than April 5, 2024. In his amended complaint, he must write a short, plain
15 statement telling the Court: (1) the constitutional right he believes was violated; (2) the name of
16 the person(s) who violated the right; (3) exactly what each individual did or failed to do; (4) how
17 the individual’s action or inaction violated his constitutional rights; and (5) what specific injury he
18 suffered because of the individual’s conduct.

19 The amended complaint will act as a complete substitute for the original complaint and
20 shall be presented on the form provided by the Court. If Plaintiff fails to file an amended complaint
21 and/or fails to adequately address the issues identified in this order, the Court may dismiss this
22 action.

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The clerk is directed to send Plaintiff (1) the appropriate forms for filing a civil rights complaint, (2) a copy of this order, and (3) the Pro Se Instruction Sheet.

Dated this 5th day of March, 2024.

Kimberly K. Eason

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United States District Judge